

# **MEMORANDUM FROM THE WELSH ASSEMBLY GOVERNMENT**

## **CONSTITUTIONAL LAW: DEVOLUTION, WALES**

### **The National Assembly for Wales (Legislative Competence) (Local Government) Order 2009**

Proposal for a Legislative Competence Order relating to  
community councils and councillor recruitment, retention  
and allowances

#### **Introduction**

1. The Government of Wales Act 2006 (“the 2006 Act”) empowers Her Majesty, by Order in Council, to confer continuing legislative competence on the National Assembly for Wales (“the Assembly”) to legislate by Assembly Measure on specified matters. Assembly Measures may make any provision which could be made by Act of Parliament (and therefore can modify existing legislation and make new provision), in accordance with the competence conferred on the Assembly and subject to the provisions of the 2006 Act.
2. The attached document is a draft Order in Council. The Order extends the legislative competence of the Assembly by inserting a number of matters into Part 1 of Schedule 5 to the 2006 Act. The Order may be made by Her Majesty in Council following approval of the draft Order by the Assembly and by both Houses of Parliament.
3. This memorandum has been prepared by the Welsh Assembly Government (“the Assembly Government”). It explains the background to and the contents of the proposed Order in Council.
4. New legislative powers related to the specified matter will enable the Assembly to pass Measures which are based on Welsh priorities and timescales. These Measures will be subject to thorough scrutiny and approval by the Assembly.

## Background

5. The Assembly Government wishes to amend Part 1 of Schedule 5 to the 2006 Act so as to include matters under Field 12 (local government) relating to—
  - local government at community level (the legislation currently in force provides for community meetings and community and town councils, generically referred to as “community councils”);
  - public information about local government for communities, counties and county boroughs;
  - remuneration of councillors in community, county and county borough councils and of members of National Park Authorities and fire and rescue authorities;
  - promoting and supporting membership of community, county and county borough councils
6. The context for the Assembly Government’s proposal flows from three reviews and their associated reports into the circumstances of community councils and of councillors in Wales.
7. Firstly, the study undertaken in 2003 by the University of Wales, Aberystwyth: Institute of Geography and Earth Sciences into community councils in Wales [“Research Study into the Role, Functions and Future Potential of Community and Town Councils in Wales” (the “Aberystwyth Report”)] presented a comprehensive review of the activities undertaken by community councils across Wales. The Aberystwyth Report identified the constraints which community councils believed they faced and set out a number of proposals for enhancing the role of community councils, should a council wish to take on additional responsibilities. The Aberystwyth Report also concluded that the existing procedures for establishing a community council were too restrictive and those for dissolving a community council were too lax. The Aberystwyth Report further recommended that the Assembly Government should examine possible alternative mechanisms for directly funding community and town councils, and providing additional funding through the use of direct grants. In its formal response to the Aberystwyth Report (in 2004), the Assembly Government gave a commitment to seek legislation to address issues identified in the review, with a view to putting in place arrangements to develop and strengthen the role of community councils and enabling them to deliver a wider range of services and actions locally. This would also serve to increase the effectiveness of community councils’ representational role and their ability to work in partnership with other bodies.
8. Secondly, in December 2007 the Report of the Councillors Commission “Representing the Future” (“the 2007 Report”) was presented to the UK Government’s Department for Communities and Local Government. The 2007 Report included numerous proposals designed to assist in the recruitment of a greater number of candidates for local government

and to assist with the retention of councillors once elected. In March 2008 the Assembly Government established the Councillor Commission Expert Panel Wales (“the Expert Panel”) to consider the recommendations of the 2007 Report and their applicability to Wales and to look at wider issues connected to the recruitment and retention of councillors. That Panel is due to report to the Assembly Government shortly, but has already indicated informally that it considers that there is need for concerted action by the Assembly Government to improve: diversity monitoring of councillors and candidates; the training and development of serving councillors; flexible working for councillors; administrative support for councillors; and public accountability of councillors.

9. Thirdly, the report of the Independent Remuneration Panel for Wales (“the Independent Panel”) is due toward the end of 2009. The Independent Panel is reviewing the remuneration structure of councillors in Wales, including salaries, allowances and pensions payable to councillors. The initial report of the Independent Panel (July 2008) and its supplementary report (December 2008) made various recommendations for future reform, and notably the seeking of legislative competence over councillors’ remuneration.
- 10 The Assembly Government has resolved to bring forward the attached Legislative Competence Order seeking to confer powers on the Assembly to legislate in relation to the areas identified by the reviews.

### **Current legislative framework**

11. The Local Government Act 1972 (“the 1972 Act”) established the current system of local government in England and Wales and makes provisions with respect to the organisation and functions of local authorities in England and Wales including a system of communities in Wales. These were the areas that were formerly the boroughs, urban districts and rural parishes in Wales, and certain divided parts of former urban districts as at 1<sup>st</sup> April 1974. The functions of the Secretary of State under the 1972 Act insofar as exercisable in Wales have been transferred, with certain exceptions, to the National Assembly for Wales and are now vested in the Welsh Ministers. Local government was further reorganised under the Local Government (Wales) Act 1994. Other statutes relating to the issues addressed by the proposed Order include the Local Government and Housing Act 1989, the Local Government Acts 2000 and 2003 and the Representation of the People Acts 1983 and 1985. The Welsh Ministers have executive functions under the Local Government Act 2000 and 2003. The functions of the Secretary of State pursuant to the Representation of the People Acts have not been transferred to the Welsh Ministers.
12. The National Assembly for Wales already has legislative competence in relation to many aspects of local government, as set out in field 12 of Schedule 5 to the 2006 Act. The legislative competence conferred by

this Order confers legislative competence on the Assembly that is wider than the current subordinate legislative power of the Welsh Ministers. Neither the Assembly nor the Welsh Ministers have power at present to legislate for significant changes to the law covering the following topics: community councils (constitution, structure, procedures and responsibilities), community reviews, relations between tiers of local government, councillor allowances (including the functions of the Independent Remuneration Panel, which is limited by regulations made in 2007) and the recruitment and retention of councillors. The legislative competence that would be conferred by the proposed Order would enable the Assembly to make changes to the law in these areas by way of Measure. More detailed analyses are provided in the paragraphs below, which set out the specific proposals.

### Scope

13. It is proposed that ten Matters be inserted under Field 12: Local Government in Schedule 5 to the Government of Wales Act 2006 to enable the Assembly to legislate on the issues covered by the Matters by way of Assembly Measure.
14. Article 2(2) would insert Matters 12.8 to 12.17 into Field 12. The following paragraphs describe each Matter in turn.
15. *Matter 12.8* would give the Assembly competence over the constitution, structure and procedures of community councils and for community meetings. It would also give competence over arrangements in respect of community reviews, in so far as they relate to the areas of communities. The current provisions relating to these activities are set out in Part II and Part IV of the 1972 Act. Sections 27-29 of the 1972 Act set out the procedures for holding community meetings and the stages for the establishment and dissolution of community councils. Welsh Ministers have no regulation-making powers to enable them to alter the rules for calling community meetings or for the staging of community polls. Section 55(2) of the 1972 Act places a duty on each principal council in Wales to keep the whole of their area under review for the purpose of considering whether or not to make recommendations to the Local Government Boundary Commission for Wales with respect to the constitution, abolition or alteration of their community areas. The Matter would also give the Assembly competence over the co-option of members and youth representatives.
16. *Matter 12.9* would give the Assembly competence over the electoral arrangements for community councils. This includes issues such as the number of councillors that may be returned; whether or not community councils should be divided into wards for electoral purposes; and reviews of these arrangements. The Matter excludes the local government franchise, the arrangements for electoral registration and electoral administration, including the conduct of elections, and the voting system used at community council elections in Wales.

17. *Matter 12.10* would provide competence for the Assembly to extend to community councils in Wales the power to promote or improve the economic, social or environmental well-being of their areas. Part I of the Local Government Act 2000 provides a power for local authorities to do anything which they consider is likely to achieve the promotion or improvement of the economic, social or environmental well-being of their area. The local authorities on which the well-being power in section 2(1) of the 2000 Act is conferred are, in relation to Wales, county councils and country borough councils only.
18. *Matter 12.11* would provide the Assembly with competence for the Welsh Ministers to make grants to community councils. The bulk of community council income is received by means of a council tax precept under section 41 of the Local Government Finance Act 1992. The developing role of community councils may create new demands on their finances and the Aberystwyth report recommended that the Assembly Government should consider providing additional funding through the use of direct grants.
19. *Matter 12.12* would provide a competence for the Assembly to legislate to encourage productive relations and collaboration between community councils and between community councils and principal councils (ie county and county borough councils). In July 2008, the Assembly Government published '*A Shared Community – Relationship building and charters for unitary authorities and community and town councils*'. This document provides guidance to encourage collaborative arrangements through which the two tiers of government would work together in a mutually supportive and co-operative way for the benefit of their communities. The development and adoption of collaboration arrangements is currently voluntary, though strongly encouraged by the Assembly Government.
20. *Matter 12.13* would provide a competence for the Assembly to put in place measures to raise the competence of community councils. There is currently no national programme to assess the competence of community councils in Wales, unlike in England which has the Quality Parish and Town Council Scheme, a national programme with standards set by stakeholders to the scheme.
21. *Matter 12.14* would provide competence for the Assembly to legislate to encourage transparency and wider participation in the proceedings of community councils. Section 21(2)(a) of the Representation of the People Act 1985 provides that where, at an ordinary election of community councillors, an insufficient number of persons are or remain validly nominated to fill the vacancies, the new council may co-opt any person or persons to fill any remaining vacancies. It is accepted good practice that opportunities for co-option are advertised openly within the local community. This avoids the perception of community councils being 'closed shops' and provides opportunities for greater participation

by under-represented groups. There is no requirement at present, however, for the advertising of vacancies.

22. *Matter 12.15* would provide competence for the Assembly to legislate to encourage greater accountability in local government by way of the information provided by principal and community councils about their activities to local people.
23. *Matter 12.16* would provide competence over issues relating to salaries, allowances, pensions and other payments to members of county and county borough councils, national park authorities, community councils and fire and rescue authorities in Wales. Legislative provisions for the remuneration of councillors are contained within section 18 of the 1989 Local Government and Housing Act, section 100 of the Local Government Act 2000 and supporting regulations. The Independent Remuneration Panel has raised the need for reform in relation to allowances, pensions and gratuities for councillors but the Panel has not yet completed its consideration of all the issues and its conclusions will not be presented until it reports in December 2009.
24. *Matter 12.17* would provide competence for the Assembly to require principal councils and community councils to provide better support and working conditions for serving councillors with a view to assisting in the recruitment of greater numbers of candidates for local government and in the retention of councillors once elected. The Assembly Government's "Expert Panel" has considered the recommendations of the UK Government's Councillors' Commission on recruiting and retaining councillors and is due to report shortly. This competence would enable the Assembly to respond to that report as appropriate.

### **Geographical limits of any Assembly Measure**

25. The proposed LCO would permit the Assembly to legislate by Measure in relation to Wales. There is no provision within the proposed LCO that would enable the Assembly to legislate in relation to English local authority functions.

### **Minister of the Crown functions**

26. By virtue of Part 2 of Schedule 5 to the 2006 Act, an Assembly Measure cannot confer or impose any function on a Minister of the Crown. This proposed LCO does not seek to disapply this restriction. By virtue of Parts 2 and 3 of Schedule 5 of the 2006 Act, the Assembly may not by Measure remove or modify any functions of a Minister of the Crown without the consent of the Secretary of State and this would be sought if applicable pursuant to any Measure flowing from this proposed LCO.

## **Conclusion**

27. For the reasons outlined above, the Welsh Assembly Government proposes that the legislative competence of the National Assembly for Wales should be extended in accordance with the provisions of the draft Order to which this Explanatory Memorandum relates.